

IN THE SUPREME COURT OF MISSISSIPPI

95 DP 64

No. 2013-DR-00491-SCT

**FILED**

MAY - 6 2013

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**WILLIE MANNING**

**PETITIONER**

**V.**

**STATE OF MISSISSIPPI**

**RESPONDENT**

---

**MOTION TO STAY EXECUTION AND SET ASIDE CONVICTIONS,  
SECOND MOTION FOR LEAVE TO FILE SUCCESSIVE PETITION  
FOR POST-CONVICTION RELIEF,  
AND MOTION IN THE ALTERNATIVE FOR OTHER FORMS OF RELIEF**

---

**I. INTRODUCTION**

In light of Department of Justice letters sent to counsel and prosecutors in the last three days acknowledging the falsity of FBI expert testimony at trial, Willie Manning respectfully submits this Motion to Stay Execution and Set Aside Convictions, Second Motion for Leave to File Successive Petition for Post-Conviction Relief, and Motion in the Alternative for Other Forms of Relief. Manning filed a previous motion for leave to file successive petition in this matter on March 22, 2013, and was denied relief on April 25, 2013. On the same day that it denied relief, the Court set an execution date of May 7, 2013.

New evidence has come to light that demands the reversal of Manning's convictions. This new evidence requires an immediate stay of execution and an examination by this Court of reports issued by the Department of Justice dated May 2 and May 4, 2013 (Exhibits A and B), which establish that Manning's convictions were obtained through the use of hair analysis that "exceeded the limits of science and was, therefore, invalid." (Ex. A at 1)

Specifically, an FBI analyst testified at Manning's trial that certain hair fragments obtained from a victim's car "came from an individual of the black race." (Ex. D at 1048). Because Manning is an African American, this evidence allowed the prosecutor to argue that the hairs "narrowed the field" to Manning and corroborated Manning's guilt.

As a result of severe criticism of its methods, the Department of Justice has been undertaking a detailed review of cases in which its forensic scientists testified. The Department expedited its review of the expert testimony in the Manning case because of the pending execution date. The Department of Justice has concluded that the FBI analyst's testimony in Manning's trial was false, because it is "error for an examiner to testify that he can determine that the questioned hairs were from an individual of a particular racial group." (Ex. B at 1) For these reasons, Manning's execution must be stayed and his convictions set aside.

In the alternative, the Court should allow Manning to file a successive petition for post-conviction relief in the court below and to proceed with a hearing on matters brought to light in the recent letters from the Department of Justice.

In addition and in the alternative, the Court should re-evaluate the request for DNA testing made in Manning's earlier motion for leave to file successive petition in this matter, in light of the recent letters from the Department of Justice, especially since the letters volunteer the use of FBI labs to perform the testing that Manning desires.

In addition and in the alternative, in light of the recent letters from the Department of Justice, the Court should grant relief from the Order entered on April 25, 2013, in this matter and the Order denying motion for rehearing dated May 2, 2013, under Rule 60(b)(6) of the Mississippi Rules of Civil Procedure.

In addition and in the alternative, in light of the recent letters from the Department of Justice, the Court should grant relief from the Order denying post-conviction relief in Manning's original post-conviction proceeding in this case, Cause No. 2001-DR-00230-SCT, under Rule 60(b)(6) of the Mississippi Rules of Civil Procedure.

## **II. LETTERS FROM THE DEPARTMENT OF JUSTICE**

On May 2, 2013, the United States Department of Justice transmitted a letter to the prosecutor in Manning's case to report that "erroneous statements regarding microscopic hair comparison analysis was used in this case." (Ex. A at 1) The letter explained that the Department of Justice and the Federal Bureau of Investigation have been engaged in a review of cases involving microscopic hair comparison in order "to ensure that FBI Laboratory reports and examiner testimony regarding microscopic hair comparison analysis met accepted scientific standards." (*Id.*) In the section of the letter labeled, "Error Identified in this Matter," the Department explains its position regarding the FBI hair expert who testified in Manning's case:

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included statements that exceeded the limits of science and was, therefore, invalid. While this case did not involve a positive association of an evidentiary hair to an individual, the examiner stated or implied in a general explanation of microscopic hair comparison analysis that a questioned hair could be associated with a specific individual to the exclusion of all others — this type of testimony exceeded the limits of the science. The examiner also assigned a statistical weight or probability or provided a likelihood that, through microscopic hair comparison analysis, the examiner could determine that a questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of a positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association — this type of testimony exceeded the limits of the science.

(Ex. A at 2)

In its May 2 letter, the Department of Justice also offered to provide additional DNA testing of the kind specifically requested by Manning in his motion filed March 22, 2013:

In the event that your office determines that further testing is appropriate or necessary, the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence if testing of hair evidence is no longer possible, if (1) the evidence to be tested is in the government's possession or control, and (2) the chain of custody for the evidence can be established.

(Ex. A at 2)

On May 4, 2013, the Department of Justice transmitted a second letter in response to inquiries about the first letter, in particular, "whether the errors identified in the [May 2] letter had any bearing on the examiner's opinion regarding the racial classification of the hair." The second letter states:

In response to inquiries regarding whether the errors identified in the notification letter had any bearing on the examiner's opinion regarding the racial classification of the hair, the FBI states the following: The scientific analysis of hair evidence permits an examiner to offer an opinion that a questioned hair possesses certain traits that are associated with a particular racial group. However, since a statistical probability cannot be determined for classification of hair into a particular racial group, *it would be error for an examiner to testify that he can determine that the questioned hairs were from an individual of a particular racial group.* Thus, an examiner cannot testify with any statement of probability whether the hair is from a particular racial group, but can testify that a hair exhibits traits associated with a particular racial group.

(Ex. B at 1) (emphasis added)

The second letter reiterated the Department's offer to provide testing of the kind requested by Manning, stating again, "the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence." (*Id.* at 2.)

### **III. THE INVALID EVIDENCE USED TO CONVICT MANNING**

Hair fibers collected from the vehicle of one of the victims in this case were sent to the FBI for microscopic analysis. The analyst at the FBI studied the evidence and issued a written report which stated that some of the hair fragments were "of Negroid racial origin." (Ex. C at 2)

At trial, the FBI expert who actually performed the examination testified that the hairs came from an African American:

I can examine hair and separate it into three major racial categories as . . . hairs from individuals of the black race, . . . hairs from . . . American Indians, Eskimos, . . . orientals, and hairs from caucasians. . . . [U]sing these certain characteristics that are associated with the various races, I was able to determine these hairs were hairs from an individual of the black race. . . . So the limit of my abilities at this point in time was just to associate these hairs or determine that these hairs came from an individual of the black race.

(Ex. D at 1047 - 1048)

The prosecutor stressed the importance of the hair evidence in his closing argument, stating that although the hair fragments could not be attributed to Manning in particular, they “narrow[ed] the field” to an African American, and corroborated Manning’s guilt. (T. 1546)

The prosecutor repeatedly referred to the hair as follows:

[O]ut of all the people that could have been a burglar of John Wise’s car, **how many of them could leave hair fragments in the car, hair fragments that came from a member of the African-American race** because that’s what they find when they vacuum the sweepings of the car, that’s what they find in both significantly the passenger’s seat and the driver’s seat, just like it would be if the man rode out there as a passenger and came back as a driver . . . . **How many people, ladies and gentlemen, who could leave those fragments**, how many of those also left his home on the morning of December 9<sup>th</sup>. . . . How many people could have committed this crime, ladies and gentlemen, that **could have left those fragments**, that left their home carrying a gun and some gloves . . . . **How many people could leave those hair fragments**, how many people left their house that morning with the gun and the gloves . . . . **How many people could leave those hair fragments**, left the house with the gun and the gloves, was trying to sell a ring and a watch like Jon Steckler’s, and also had the jacket from John Wise’s car . . . . **How many people could leave the fragments**, left his house with gun and gloves . . . .

T. at 1546-47 (emphasis added).

In his rebuttal argument, the prosecutor again referred to the hair fragments of an African American as evidence that was corroborative of Manning’s guilt. T. 1607.

#### IV. MANNING IS ENTITLED TO RELIEF

The two letters from Department of Justice, both of which state that the hair analysis in this case “exceeded the limits of science and was, therefore, invalid,” constitute new evidence, evidence “not previously available” which implicates Manning’s fundamental right to a fair trial. Therefore this is no procedural bar to this motion. Miss. Code Ann. § 99-39-5; *Rowland v. State*, 98 So.3d 1032, 1036 (2012) (“In addition to the statutory exceptions afforded by the [UPCCRA], . . . an exception to the procedural bars exists for errors affecting certain constitutional rights.”).<sup>1</sup>

The first letter from the Department of Justice states that the hair analyst gave “an opinion as to the likelihood or rareness of a positive association that could lead the jury to believe [mistakenly] that valid statistical weight can be assigned to a microscopic hair association.” (Ex. A at 2.) Even if the analyst did not connect the hair specifically to Manning, he exaggerated the probative value of microscopic hair analysis generally and led the jury to think that such evidence had a certain “statistical weight” that it lacked.

At Manning’s trial, the FBI expert did exactly what the May 4 letter from the Department of Justice now admits cannot reliably be done: he testified not only that he *could*, but that he *did* “determine that the questioned hairs were from an individual of a particular racial group” (Ex. B at 1). Consequently the testimony of the FBI analyst, accepted by the court as an expert under

---

<sup>1</sup> Procedural and time bars have been relaxed even in cases which do not involve the death penalty. *Stevenson v. State*, 674 So. 2d 501, 505 (Miss. 1996) (granting relief on third successive petition for post-conviction relief and setting aside illegal sentence, even though petition “would generally be successive writ barred, procedurally barred and time-barred”); *Smith v. State*, 477 So. 2d 191, 195-96 (Miss. 1985) (granting relief on basis of “plain error . . . of constitutional dimensions,” for claims that ordinarily would have been time-barred and procedurally barred; “errors affecting fundamental rights are exceptions to the rule.”); *Grubb v. State*, 584 So. 2d 786, 789 (Miss. 1991) (granting relief based on plain error despite applicability of procedural bar on successive petitions); *Luckett v. State*, 582 So. 2d 428, 430 (Miss. 1991) (“Errors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration, and this case discloses a denial of due process in sentencing.” *Id.*

Rule 702 of the Mississippi Rules of Evidence and presumed to be the source of reliable, scientific testimony, was in fact false.

Manning was prejudiced by the hair analyst's report and testimony. This evidence provided the prosecutor his only direct means of placing an African American assailant in the car of Tiffany Miller. No other item of circumstantial evidence could do that – not any of the items stolen from Jon Wise's car, nor the testimony that Manning shot bullets into a tree with the same gun used to kill the victims. Only the hair could be used to prove the assailant's presence in the car. Moreover, because the hair fragments identified as "Negroid" were found on both the passenger side and the driver's side of the car, the evidence was consistent with the prosecution's theory that the black assailant had ridden to the murder scene as a passenger (apparently with one victim on his lap), and had left the murder scene as the driver.

The FBI analyst's misleading exaggeration of the hair's probative value was just what the prosecutor needed. The analyst's testimony that the hair came from "an individual of the black race" allowed the prosecutor to make the incorrect statistical argument that the hair increased the odds that Manning was the perpetrator of the crime – it "narrowed the field" to Manning, an African American. This was an invaluable, though incorrect, argument in a case built primarily on circumstantial evidence.

**V. EVEN IF THE FALSE EVIDENCE WAS PRESENTED IN GOOD FAITH,  
THE REASONABLE PROBABILITY OF A DIFFERENT OUTCOME  
REQUIRES A NEW TRIAL.**

Manning is entitled to a new trial or at least a remand for a determination of his entitlement to forensic testing and an evidentiary hearing if the State relied on false testimony to secure the convictions. When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting the truthfulness of the witness violates

due process. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972); *see also Napue v. Illinois*, 360 U.S. 264, 269 (1959). If the State is not aware that its witness is testifying falsely, relief is still warranted if there is a reasonable probability that the result of the proceeding would have been different but for the false testimony. *See United States v. Agurs*, 427 U.S. 97, 103 (1976) (establishment of a due process violation does not turn on the moral culpability of the prosecutor but on the importance of the evidence); *Killian v. Poole*, 282 F.3d 1204, 1209 (9<sup>th</sup> Cir. 2002) (“A conviction based in part on false evidence, even false evidence presented in good faith, hardly comports with fundamental fairness.”); *Johnson v. Dretke*, 394 F.3d 332, 336 (5<sup>th</sup> Cir. 2004); *United States v. Wallach*, 935 F.2d 445, 473 (2d Cir.1991) (holding that perjury by a key government witness, irrespective of whether the government knew of the perjury at the time of trial, “infected the trial proceedings” and required reversal).

A petitioner may establish a due process violation if the State’s use of false evidence led to his conviction. *Maxwell v. Roe*, 628 F.3d 486, 506-07 (9<sup>th</sup> Cir. 2010). If a witness gives false testimony, the Court should reverse if “there is a reasonable probability that [without the false testimony] the result of the proceeding would have been different.” *Id.* (quoting *Killian*, 282 F3d at 1208).

As Manning has noted, the expert hair testimony was used persuasively by the prosecutor as the only physical evidence linking Manning to Tiffany Miller’s car. No other physical evidence directly placed him anywhere near the scene of the murders. The prosecutor left no doubt that he expected the jurors to conclude that Manning was the source of the hairs found in the car because the hairs were linked to an African-American. The expert testimony providing the foundation for this critical link was indisputably false, as the FBI has admitted. For these reasons, Manning is entitled to have the Court vacate his convictions or stay his execution and



remand this matter to the Circuit Court for a hearing and an opportunity to secure appropriate forensic testing.

**VI. THE COURT SHOULD RECONSIDER ITS DECISION  
TO DENY DNA AND OTHER FORENSIC TESTING.**

Rule 60(b)(6) allows the court, in “extraordinary and compelling circumstances . . . to do justice in a particular case.” *Briney v. United States Fid. & Guar. Co.*, 714 So. 2d 962, 966 (Miss. 1998) (cites and internal quotes omitted).<sup>2</sup> “The Rule is a grand reservoir of equitable power to do justice in a particular circumstance.” *R.K. v. J.K.*, 946 So. 2d 764, 776 (Miss. 2007); *M.A.S. v. Miss. Dep’t of Human Serv.*, 842 So. 2d 527, 530 (Miss. 2003) (reversing denial of relief to vacate paternity order).

This Court has enumerated several considerations for determining whether to grant relief pursuant to Rule 60: “(1) that final judgments should not be lightly disturbed; (2) that the Rule 60(b) motion is not to be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was made within a reasonable time; (5) [relevant only to default judgments]; (6) whether if the judgment was rendered after a trial on the merits the movant had a fair opportunity to present his claim or defense; (7) whether there are any intervening equities that would make it inequitable to grant relief; and (8) any other factors relevant to the justice of the judgment under attack.” *R.K.*, So. 2d at 776. Because this Court had original jurisdiction over the initial petition for post-conviction relief, the second factor is not at issue; likewise, because this case does not involve a

---

<sup>2</sup> Reliance on Rule 60 in a post-conviction context is appropriate. As this Court recognized over two decades ago, “[p]ost-conviction actions employ many of the procedural trappings of a civil action.” *Neal v. State*, 525 So. 2d 1279, 1281, n.2 (Miss. 1987).

default judgment, the fifth factor is also inapplicable. However, a consideration of the remaining factors supports the grant of relief.

Manning is not asking the Court lightly to disturb its prior judgment. Rather, this motion is compelled by the extraordinary admissions by the FBI. Manning has “a liberty interest in demonstrating his innocence with new evidence under state law.” *District Attorney’s Office for the Third Judicial Circuit v. Osborne*, 557 U.S. 52, 68 (2009). Manning previously discussed the amount of biological evidence available for testing and the fingerprints that can be run through appropriate databases. A majority of the Court denied relief largely because it viewed the prosecution’s evidence at trial to be overwhelming. Manning objected to the Court’s approach, arguing that its review failed to account for contrary evidence at trial and other evidence developed in post-conviction proceedings. Now, even the prosecution’s case has been undermined by the series of FBI concessions that its expert testimony exceeded the limits of science. We now know that the FBI erred when it linked the hair to an African-American, and thus the District Attorney relied on false evidence when he used that testimony to link Manning to the crime scene. This new evidence should lead the Court to reconsider its prior decision and grant the request for DNA and other forensic testing.

Respectfully submitted, this the 6<sup>th</sup> day of May, 2013.

WILLIE JEROME MANNING

By:   
COUNSEL FOR MANNING

Of Counsel:

David P. Voisin (MSB #100210)  
David P. Voisin, PLLC  
P. O. Box 13984  
Jackson, MS 39236-3984  
(601) 949-9486

Robert S. Mink (MSB #9002)  
Wyatt, Tarrant & Combs, LLP  
4450 Old Canton Road, Suite 210  
Jackson, MS 39211  
(601) 987-5324

**CERTIFICATE OF SERVICE**

I, Robert S. Mink, hereby certify that I have served this day a copy of the foregoing to the following counsel for Respondents via email and via hand delivery:

Marvin L. White, Jr.  
Jason L. Davis  
Office of the Attorney General  
P. O. Box 220  
Jackson, MS 39205-0220

This the 6<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
ROBERT S. MINK (MSB #9002)



U.S. Department of Justice

---

950 Pennsylvania Ave., NW  
Washington, DC 20530

**VIA E-MAIL**

May 2, 2013

Deforest R. Allgood, Esq.  
District Attorney's Office  
Oktibbeha County, P.O. Box 1044  
Columbus, MS 39703

Re: Manning v. Mississippi, 2013-DR-00491-SCT

Dear Mr. Allgood:

We write to advise you of the results of a review by the United States Department of Justice (the "Department") and the Federal Bureau of Investigation ("FBI" and collectively with the Department "DOJ") of laboratory reports and testimony by FBI Laboratory examiners in cases involving microscopic hair comparison analysis. Through this review, we have determined that testimony containing erroneous statements regarding microscopic hair comparison analysis was used in this case. This error and the process through which it was identified are explained in more detail below. We ask that you determine the actions your office should take in light of this error.

## **I. Background**

DOJ has been engaged in a review of microscopic hair comparison reports and testimony presented by the FBI Laboratory before December 31, 1999, after which mitochondrial DNA testing became routine. The science underlying microscopic hair comparison is not the subject of this review. However, in some cases, FBI Laboratory examiners exceeded the limits of science by overstating the conclusions that may appropriately be drawn from a positive association between evidentiary hair and a known hair sample. This is in contrast to cases in which the FBI Laboratory report and examiner testimony presented conclusions that may appropriately be drawn from a positive association. Thus, the purpose of this review is to ensure that FBI Laboratory reports and examiner testimony regarding microscopic hair comparison

analysis met accepted scientific standards and to identify those cases in which those standards were not met so that any appropriate remedial action may be taken.

## **II. Error Identified in this Matter**

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included statements that exceeded the limits of science and was, therefore, invalid. While this case did not involve a positive association of an evidentiary hair to an individual, the examiner stated or implied in a general explanation of microscopic hair comparison analysis that a questioned hair could be associated with a specific individual to the exclusion of all others – this type of testimony exceeded the limits of the science. The examiner also assigned a statistical weight or probability or provided a likelihood that, through microscopic hair comparison analysis, the examiner could determine that a questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of a positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association – this type of testimony exceeded the limits of the science. (A copy of the documents upon which this determination was based is enclosed.)

## **III. Potential Victim Notification**

We recommend that you promptly advise the appropriate victim advocate in your office of this error, so that he/she may determine how and when to inform the victim or the victim's family that this matter may be the subject of further litigation and that they may be contacted by the defense.

## **IV. Potential DNA Testing**

In the event that your office determines that further testing is appropriate or necessary, the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence if testing of hair evidence is no longer possible, if (1) the evidence to be tested is in the government's possession or control, and (2) the chain of custody for the evidence can be established.

## **V. Report of Action Taken**

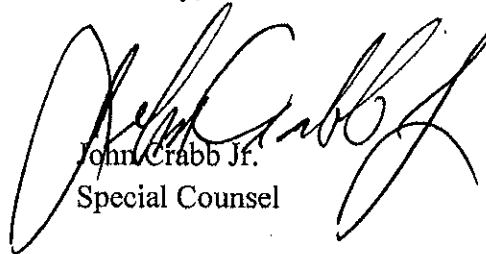
To assist us in monitoring the status of cases involving microscopic hair analysis comparisons, we ask that you please advise us by May 6, 2013, if you intend to take any action based on the information that we are providing to you. Please send this information to [USAEO.HairReview@usdoj.gov](mailto:USAEO.HairReview@usdoj.gov), and let us know if we can be of any assistance.

## VI. Additional Notifications

You should be aware that we are also notifying the defense, as well as the Innocence Project and the National Association of Criminal Defense Lawyers of the error. These organizations have expressed an interest in determining whether improper reports or testimony affected any convictions and, if so, to ensure appropriate remedial actions are taken. To assist them in their evaluation, we will provide them with information from our files, including copies of FBI Laboratory examiners' reports and testimony, as well as our assessment of those reports and testimony.

If you have any questions regarding this matter please contact us at the email address provided above.

Sincerely,



John Crabb Jr.  
Special Counsel

Encl.

cc: David Voisin, Esq. (via e-mail)  
Peter J. Neufeld, Esq., Co-Director, Innocence Project (via e-mail)  
Norman Reimer, Esq., Director, NADCL (via e-mail)



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C., 20535-0001

**MICROSCOPIC HAIR COMPARISON ANALYSIS  
RESULT OF REVIEW**

Date: 05/02/2013

To: Innocence Project  
Microscopic Hair Comparison Analysis Review Team

From: Federal Bureau of Investigation  
Microscopic Hair Comparison Analysis Review Team  
Laboratory Division

FBI File Number: 26A-JN-20369

Criminal Docket Number: Unknown

Defendant: Willie Jerome Manning

Victim: Jon Stephen Steckler and Pamela Tiffany Miller

☒ Trial ☐ Plea ☐ Stipulation

☒ Transcript enclosed

☒ Lab Report enclosed

In response to notification by the National Association of Criminal Defense Lawyers that the referenced case was slated for execution on May 7, 2013 and in light of the fact that FBI testimony regarding microscopic hair comparison analysis was provided at trial, the Federal Bureau of Investigation (FBI) reviewed the laboratory report and testimony in accordance with the Statement of Scientific Standards agreed to on November 9, 2012 for use in the DOJ/FBI Microscopic Hair Comparison Review. Given the abbreviated time frame for review, the FBI requests the Innocence Project (IP) to advise as to whether or not they agree with the FBI's conclusions as soon as possible.

The FBI has conducted its review of the report issued in this case and found it to contain:

☒ **Appropriate Statements**

☐ **Inappropriate Statements**

There was no positive association to an individual in this case. However, the testimony contained erroneous statements as to the scientific limits of hair analysis (similar to Errors 1 and 2 below).

☒ **Error Type 1:** The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science. NOTE: In this case, the statement identified as erroneous was not associated with the evidentiary hair.

☒ **Error Type 2:** The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of the science. NOTE: In this case, the statement identified as erroneous was not related to the evidentiary hair.

☐ **Error Type 3:** The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of the science.

☐ **Appropriate**



FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

To: Ms. Lora Herff Aria  
Forensic Scientist II  
State of Mississippi  
Department of Public Safety  
Mississippi Crime Laboratory  
Post Office Box 4450  
Meridian, Mississippi 39304

Date: March 8, 1993

FBI File No. 26A-JN-20369

Lab No. 30107045 S XM  
30119047 S XM VB

Reference: Communications dated January 6, 1993 and December 28, 1992

Your No. H92-1878

Re: UNKNOWN SUBJECT(S);  
JOHN STECKLER - VICTIM (DECEASED);  
PAMELA TIFFANY MILLER - VICTIM (DECEASED);  
CARJACKING

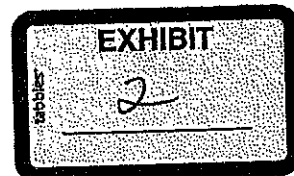
OO: Jackson

Specimens received: January 7, 1993, under cover of communication dated  
January 6, 1993 (30107045 S XM):

- Q7 Cuttings from shirt (29)
- Q8 Blood from mud flap (33)
- Q9 Blood from mud flap (34)

1 - Dolph Bryan  
Sheriff  
Oktibbeha County Sheriff's Department  
111 Washington Street  
Starkville, Mississippi 39759

1 - Mr. Tom Bush  
Supervisor  
Federal Bureau of Investigation  
100 West Capital  
Suite 1533  
Jackson, Mississippi 39269



AUG 31 1991 KB *gfk*



Q10 Blood from spoiler (37)  
Q11 Blood from projectile (61)  
  
K3 Dried blood sample from MILLER (4)  
K4 Dried blood sample from STECKLER (17)  
K5 Dried blood sample from REED (64-7)  
K6 Dried blood sample from LOWERY (65-7)  
K7 Dried blood sample from HILL (62)

Specimens received January 19, 1993, under cover of  
communication dated December 28, 1992 (30119047 S XM VB):

ITEMS FROM VICTIM PAMELA TIFFANY MILLER:

Q12-Q13 Shoes (1)  
Q14 Underwear (5)  
Q15 Belt (5)  
Q16 Jeans (5)  
Q17 Shirt (11)  
Q18 T-shirt (12)

ITEMS FROM VICTIM JOHN STEPHEN STECKLER:

Q19-Q20 Shoes (4)  
Q21 Pants (9)  
Q22 Shirt (10)  
Q23 T-shirt (8)

MISCELLANEOUS ITEMS:

Q24 Bags (13)  
Q25 Paper (7)

ITEMS FROM MILLER:

- Q26 Debris from right hand
- Q27 Pubic combings
- Q28 Debris from undergarments

ITEMS FROM STECKLER:

- Q29 Debris from left hand
- Q30 Debris from undergarments

ITEMS FROM LOWERY:

- Q31-Q32 Debris from jeans
- Q33-Q34 Debris from long sleeve jeans
- Q35-Q36 Debris from sweat shirt
- Q37-Q38 Debris from knit shirt
- Q39-Q40 Debris from jeans
- Q41-Q41A Debris from jeans

ITEM FROM SUSPECT JOHNNY LOWERY:

- Q42 Shirt (14)

ITEMS FROM VEHICLE:

- Q42A Debris from car spoiler
- Q43 Vacuum sweepings from passenger side of MILLER's car (2)
- Q44 Vacuum sweepings from driver's side of MILLER's car (3)
- Q45 Vacuum sweepings from gear shift boot of MILLER's car (6)
- Q46 Vacuum sweepings from driver's side floor (15)
- Q47 Vacuum sweepings from driver's seat (16)

Q48 Vacuum sweepings from passenger floor (17)  
Q49 Vacuum sweepings from passenger seat (18)  
Q50 Debris from driver's seat - back and headrest  
Q51 Debris from right side carpet and console  
Q52 Debris from right side seat - back and headrest  
Q53 Debris from right side seat - bottom  
Q54 Debris from carpet behind driver's seat  
Q55 Debris from driver's seat - back and headrest  
Q56 Debris from driver's seat - bottom  
Q57 Debris from carpet on driver's side, console and floor  
Q58 Debris from carpet between door and driver's seat  
Q59 Debris from carpet between door and seat  
K8 Pubic hair sample from MILLER  
K9 Head hair sample from MILLER  
K10 Pubic hair sample from STECKLER  
K11 Head hair sample from STECKLER  
K12 Known floor mat fiber sample from MILLER's vehicle  
K13 Known carpet fiber sample from MILLER's vehicle  
K14 Known seat fabric sample from MILLER's vehicle

ALSO SUBMITTED:

Electric clock (23)  
Rear view mirror (26)  
Seat belt buckle (27)  
Cloth bag with audio tape (19)

Paper bag (24)

Paper (25)

Result of examination:

Deoxyribonucleic acid (DNA) profiles for genetic loci D2S44 and D17S79 were developed from HAE III digested high molecular weight DNA extracted from specimens Q7 and K3 through K7. No DNA profile results unlike the K7 sample from GAYLAND HILL were obtained for specimen Q7.

DNA profile results for specimens Q8 through Q11 were inconclusive.

You will be advised of the results of the latent fingerprint examinations in a separate report.

The other requested Laboratory examinations are continuing. You will be advised of the results of those examinations and the disposition of the submitted items in a subsequent report.



FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

To: Ms. Lora Herff Aria  
Forensic Scientist II  
State of Mississippi  
Department of Public Safety  
Mississippi Crime Laboratory  
Post Office Box 4450  
Meridian, Mississippi 39304

Date: April 8, 1993

FBI File No. 26A-JN-20369

Lab No. 30107045 S XM  
30119047 S XM VB  
30318017 S YO VB XM

Reference: Communications dated January 6, 1993, December 28, 1992 and  
March 17, 1993

Your No. H92-1878

Re: UNKNOWN SUBJECT(S);  
JOHN STECKLER - VICTIM (DECEASED);  
PAMELA TIFFANY MILLER - VICTIM (DECEASED);  
CARJACKING

OO: Jackson

Specimens received: January 7, 1993

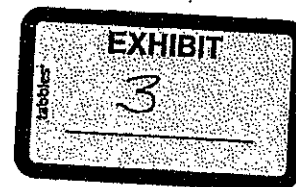
Specimens received March 18, 1993, under cover of communication  
dated March 17, 1993 (30318017 S YO VB XM):

Q60 Jacket

Q61 Hat

1 - Dolph Bryan  
Sheriff  
Oktibbeha County Sheriff's Department  
111 Washington Street  
Starkville, Mississippi 39759

1 - Mr. Tom Bush  
Supervisor  
Federal Bureau of Investigation  
100 West Capital  
Suite 1533  
Jackson, Mississippi 39269



Page 1

(over) TEST A TRUE COPY  
MISSISSIPPI CRIME LABORATORY  
AUG 31 2001 VS ml

This Report Is Furnished For Official Use Only

K15            Pubic combings from STEVE EVANS  
K16            Pulled pubic hairs from STEVE EVANS  
K17            Pulled head hairs from STEVE EVANS

Result of examination:

This report supplements the FBI Laboratory report to your department dated March 8, 1993. Please refer to that report for a detailed listing of the submitted items.

Blood, which was not further characterized, was identified on specimen Q13. No blood was identified on specimens Q12, Q60 or Q61.

No semen was identified on specimens Q12 through Q18.

There were no hairs of Negroid racial origin found among the debris from Q12 through Q30.

Hairs of Caucasian racial origin which are not suitable for significant comparison purposes were found among the debris from Q32 and Q38. No hairs of Caucasian racial origin were found among the debris from Q31, Q33 through Q37 and Q39 through Q42.

Hair fragments of Negroid racial origin which are not suitable for significant comparison purposes were found in Q43 and Q44. No hairs of Negroid origin were found in Q42A and Q45 through Q59.

Debris containing textile fibers has been removed from specimens Q12 through Q25 and placed in pillboxes for possible future comparison purposes.

The submitted items and the probed membranes will be returned to you under separate cover by registered mail. In addition to the evidence in this case, the remaining processed DNA from specimens examined by DNA analysis is also being returned under separate cover. The processed DNA can be found in a package marked "PROCESSED DNA SAMPLES: SHOULD BE REFRIGERATED/FROZEN." It is recommended that these samples be stored in a refrigerator/freezer and isolated from evidence that has not been examined.

ATTEST A TRUE COPY  
MISSISSIPPI CRIME LABORATORY  
AUG 31 2001 WBS HSE



U.S. Department of Justice

---

950 Pennsylvania Ave., NW  
Washington, DC 20530

VIA E-MAIL

May 4, 2013

Deforest R. Allgood, Esq.  
District Attorney's Office  
Okibbeha County, P.O. Box 1044  
Columbus, MS 39703

Re: Manning v. Mississippi, 2013-DR-00491-SCT

Dear Mr. Allgood:

We write to advise you of additional results of a review by the United States Department of Justice (the "Department") and the Federal Bureau of Investigation ("FBI" and collectively with the Department "DOJ") of laboratory reports and testimony by FBI Laboratory examiners in cases involving microscopic hair comparison analysis. Through this review, we previously determined that testimony containing erroneous statements regarding microscopic hair comparison analysis was used in this case. (See Letter dated May 2, 2013.) That error and the process through which it was identified were explained in more detail in our May 2, 2013 letter.

**I. Additional Error Identified in this Matter**

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included additional statements that exceeded the limits of science and was, therefore, invalid. In response to inquiries regarding whether the errors identified in the notification letter had any bearing on the examiner's opinion regarding the racial classification of the hair, the FBI states the following: The scientific analysis of hair evidence permits an examiner to offer an opinion that a questioned hair possesses certain traits that are associated with a particular racial group. However, since a statistical probability cannot be determined for classification of hair into a particular racial group, it would be error for an examiner to testify that he can determine that the questioned hairs were from an individual of a particular racial group. Thus, an examiner cannot testify with any statement of probability

whether the hair is from a particular racial group, but can testify that a hair exhibits traits associated with a particular racial group. (A copy of the FBI Microscopic Hair Analysis Report, dated May 4, 2013, is attached.)

## **II. Potential DNA Testing**

In the event that your office determines that further testing is appropriate or necessary, we reiterate that the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence if testing of hair evidence is no longer possible, if (1) the evidence to be tested is in the government's possession or control, and (2) the chain of custody for the evidence can be established.

## **III. Report of Action Taken**

To assist us in monitoring the status of cases involving microscopic hair analysis comparisons, we ask that you please advise us by May 6, 2013, if you intend to take any action based on the information that we are providing to you. Please send this information to [USAEO.HairReview@usdoj.gov](mailto:USAEO.HairReview@usdoj.gov), and let us know if we can be of any assistance.

## **IV. Additional Notifications**

You should be aware that we are also notifying the governor's office and the defense, as well as the Innocence Project and the National Association of Criminal Defense Lawyers of the error. The Innocence Project and the National Association of Criminal Defense Lawyers have expressed an interest in determining whether improper reports or testimony affected any convictions and, if so, to ensure appropriate remedial actions are taken. To assist them in their evaluation, we will provide them with information from our files, including copies of FBI Laboratory examiners' reports and testimony, as well as our assessment of those reports and testimony.



If you have any questions regarding this matter please contact us at the email address provided above.

Sincerely,

/s/  
John Crabb Jr.  
Special Counsel

Encl.

cc: David Voisin, Esq. (via e-mail)  
Jack Wilson, Deputy Counsel, Office of the Governor (via e-mail)  
Peter J. Neufeld, Esq., Co-Director, Innocence Project (via e-mail)  
Norman Reimer, Esq., Director, NADCL (via e-mail)



**U.S. Department of Justice**  
Federal Bureau of Investigation  
Washington, D.C., 20535-0001

---

**MICROSCOPIC HAIR COMPARISON ANALYSIS**

Date: 05/04/2013

To: Special Counsel  
Microscopic Hair Comparison Analysis Review Team  
Department of Justice

From: Federal Bureau of Investigation  
Microscopic Hair Comparison Analysis Review Team  
Laboratory Division

Re: Manning v. Mississippi, 2013-DR-00491-SCT

In response to inquiries regarding whether the errors identified in the notification letter had any bearing on the examiner's opinion regarding the racial classification of the hair, the FBI provides the following:

The scientific analysis of hair evidence permits an examiner to offer an opinion that a questioned hair possesses certain traits that are associated with a particular racial group. However, since a statistical probability cannot be determined for classification of hair into a particular racial group, it would be error for an examiner to testify that he can determine that the questioned hairs were from an individual of a particular racial group. Thus, an examiner cannot testify with any statement of probability whether the hair is from a particular racial group, but can testify that a hair exhibits traits associated with a particular racial group.



FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

To: Ms. Lora Herff Aria  
Forensic Scientist II  
State of Mississippi  
Department of Public Safety  
Mississippi Crime Laboratory  
Post Office Box 4450  
Meridian, Mississippi 39304

Date: April 8, 1993

FBI File No. 26A-JN-20369

Lab No. 30107045 S XM  
30119047 S XM VB  
30318017 S YO VB XM

Reference: Communications dated January 6, 1993, December 28, 1992 and  
March 17, 1993

Your No. H92-1878

Re: UNKNOWN SUBJECT(S);  
JOHN STECKLER - VICTIM (DECEASED);  
PAMELA TIFFANY MILLER - VICTIM (DECEASED);  
CARJACKING

OO: Jackson

Specimens received: January 7, 1993

Specimens received March 18, 1993, under cover of communication  
dated March 17, 1993 (30318017 S YO VB XM):

Q60 Jacket

Q61 Hat

1 - Dolph Bryan  
Sheriff  
Oktibbeha County Sheriff's Department  
111 Washington Street  
Starkville, Mississippi 39759

1 - Mr. Tom Bush  
Supervisor  
Federal Bureau of Investigation  
100 West Capital  
Suite 1533  
Jackson, Mississippi 39269



Page 1

(over) TEST A TRUE COPY  
MISSISSIPPI CRIME LABORATORY  
AUG 31 2001 VB PL

This Report Is Furnished For Official Use Only

C

K15        Pubic combings from STEVE EVANS  
K16        Pulled pubic hairs from STEVE EVANS  
K17        Pulled head hairs from STEVE EVANS

Result of examination:        :

This report supplements the FBI Laboratory report to your department dated March 8, 1993. Please refer to that report for a detailed listing of the submitted items.

Blood, which was not further characterized, was identified on specimen Q13. No blood was identified on specimens Q12, Q60 or Q61.

No semen was identified on specimens Q12 through Q18.

There were no hairs of Negroid racial origin found among the debris from Q12 through Q30.

Hairs of Caucasian racial origin which are not suitable for significant comparison purposes were found among the debris from Q32 and Q38. No hairs of Caucasian racial origin were found among the debris from Q31, Q33 through Q37 and Q39 through Q42.

Hair fragments of Negroid racial origin which are not suitable for significant comparison purposes were found in Q43 and Q44. No hairs of Negroid origin were found in Q42A and Q45 through Q59.

Debris containing textile fibers has been removed from specimens Q12 through Q25 and placed in pillboxes for possible future comparison purposes.

The submitted items and the probed membranes will be returned to you under separate cover by registered mail. In addition to the evidence in this case, the remaining processed DNA from specimens examined by DNA analysis is also being returned under separate cover. The processed DNA can be found in a package marked "PROCESSED DNA SAMPLES: SHOULD BE REFRIGERATED/FROZEN." It is recommended that these samples be stored in a refrigerator/freezer and isolated from evidence that has not been examined.

ATTEST A TRUE COPY  
MISSISSIPPI CRIME LABORATORY  
AUG 31 2001 WJH WJH

1 under oath.

2 A. Yes, your Honor.

3 BY THE COURT: You may proceed.

4 BY MR. ALLGOOD: If your Honor please, may I--may  
5 I inquire through the Court of defense counsel whether  
6 or not I need to proceed with the qualification of the  
7 witness. He has already been qualified once before I  
8 believe.

9 BY MR. WILLIAMSON: Your Honor, we would not re--  
10 make that requirement or request.

11 BY THE COURT: Then he will be accepted as an  
12 expert in the field of hair and fiber examination.

13 BY MR. ALLGOOD: Thank you, your Honor.

14 BY THE COURT: You may proceed.

15 DIRECT EXAMINATION BY MR. ALLGOOD:

16 Q. Mr. Blythe, you were out here previously just a few  
17 minutes ago, is that correct?

18 A. That's correct.

19 Q. We had us a little glitch in terms of our evidence I  
20 believe, is that right?

21 A. Yes.

22 Q. Explain for the ladies and gentlemen of the jury why that  
23 happened. Explain if you would, uh, the situation, the circum-  
24 stances that--that gave rise to this--this particular glitch here,  
25 this situation.

26 A. Uh, the car--the--the processing of the car had occurred,  
27 uh, by other authorities prior to January fourth, nineteen, uh,  
28 ninety-three, when I came down and did--followed a similar, uh, uh,  
29 methodology in processing the car and collecting vacuum sweepings.

D

1 In effect vacuum sweepings were collected on two different  
2 occasions from that automobile.

3 Q. And insofar as the evidence that was collected earlier by  
4 the Mississippi State Crime Lab, uh, or by the--the--actually the  
5 Oktibbeha County sheriff's office, it was first given a Mississippi  
6 lab number and then subsequently after that given an FBI lab  
7 number, is that correct?

8 A. Well if--if it went to the Mississippi State Lab, I  
9 assume that they do a similar, uh, numbering system that we use;  
10 yes, that's correct.

11 Q. And when it came into the FBI lab it was numbered again,  
12 is that right?

13 A. That's correct.

14 Q. And then when you generated your report on your results  
15 it listed the FBI lab number, is that correct?

16 A. That's correct.

17 Q. And, of course, there--there was some confusion as to  
18 which--I--I think y'all do Q numbers, Q-43 and 44, are what those  
19 items were I believe. There was some confusion as to who exactly  
20 had taken the sweepings in Q-43 and 44, is that correct?

21 A. Temporarily, yes, that's true.

22 Q. You actually did take some sweepings from the vehicle.

23 A. That's correct, but not--not the ones that we had at that  
24 time.

25 Q. Now you have before you what has been marked, uh, State's  
26 in Evidence Number 50 and State's in Evidence Number 49, and I'm  
27 going to ask you again to go ahead and examine those and tell us if  
28 you can identify the contents.

29 A. (Witness examines exhibits) Yes, I can.

1 Q. Now, what is that and what was requested of you?

2 A. These two brown paper bags, uh, represent the debris that  
3 was collected, uh, from the passenger's side of the automobile and  
4 from the driver's side of the automobile, uh, on December twelfth,  
5 nineteen ninety-two.

6 Q. And what services were requested of you--what were you  
7 asked to do with these particular items of evidence?

8 A. Uh, in--in doing hair or fiber examinations we're trying  
9 to locate questioned items which these were, we're trying--for  
10 example, we're trying to locate questioned hairs, and by comparing  
11 these questioned hairs with a sample of hair that was taken from an  
12 individual, I can then microscopically determine if the hairs look  
13 alike and determine with some degree of certainty, although not  
14 absolutely, but with some degree of certainty if hairs, for  
15 example, found in vacuum sweepings from an automobile originated  
16 from a particularly named individual.

17 Q. Now, insofar as--as that particular part of forensic  
18 science, how do you do that? How do you go about making these  
19 comparisons; what do you look for, and--and what is, I guess you'd  
20 say, a--a thumbnail sketch of the science behind hair and fiber  
21 analysis?

22 A. Well even--even in the--the light of the DNA technology  
23 and things that exist today, the method used in hair comparisons is  
24 still microscopic, that is, we examine the hairs under microscopes  
25 at relatively high magnification, see a lot of details about the  
26 hair both on the outside of the hair and inside the hair shaft.  
27 Uh, by examining in this way I can see a lot of characteristics of  
28 the hair. For example, a--a hair generally is round in cross  
29 sectional shape, that is, if I hold it and look exactly down the

1 end and cut across it looks generally round, uh, or some--or  
2 deformation of being round. Uh, a hair has scales on it and these  
3 scales are--are long or short, depending on the individual; they  
4 stick out or protrude a lot from the hair shaft or--or a small  
5 amount; uh, naturally the color of the hair differs from individual  
6 to individual. Uh, there are pigment granules inside the hair;  
7 there are--there are large pigment granules or small, some are  
8 round, some are oval shaped; the way pigment granules are grouped,  
9 for example, in clusters or clumps; sometimes they're uniformly  
10 distributed in the hair. There are a number of characteristics  
11 that I look at in a hair, uh, and I can see if these things are  
12 present in both the questioned hair, for example, hair from the  
13 vacuum sweepings, and a known hair sample, a hair that's plucked  
14 from an individual to see if the questioned hair and the known hair  
15 sample are microscopically alike. Uh, we have found that if they  
16 are microscopically alike, uh, there is a degree of certainty,  
17 although not absolute like a fingerprint, but there's a relatively  
18 high degree of certainty that the hair originated from the  
19 individual with whom we associate it microscopically.

20 Q. Now, insofar as your comparisons, these are done as I  
21 think you've already said, with a high powered microscope, is that  
22 correct?

23 A. That's correct.

24 Q. Now, uh, these--these methods that you've described or  
25 the method of using that--that, uh, electron scanning microscope  
26 and what have you, is it generally accepted in the scientific  
27 community as being positive for the comparison of hair and fiber  
28 evidence?

29 A. Actually it's a light microscope, and, yes, this is the



1 accepted, uh, state of the art at the present time.

2 Q. Now, uh, did you in fact perform these examinations on  
3 this evidence?

4 A. Yes, I did.

5 Q. And what were you able to determine?

6 A. Uh, in these two specimens that I have, uh, labeled Q-43  
7 and Q-44, uh, there were hairs located in there. By examining  
8 these hairs I noted certain racial characteristics, that is, I  
9 can--I can examine hair and separate it into three major racial  
10 categories as, uh, hairs from individuals of the black race, uh,  
11 hairs from mongoloids; they are American Indians, Eskimos, uh, and  
12 orientals, and hairs from caucasians. These hairs from different  
13 racial groups exhibit different characteristics. I was able to  
14 determine that hairs that were found in these specimens exhibited  
15 characteristics associated with the black race. Uh, also these  
16 hairs were fragments or small pieces of hair. Uh, first of all in  
17 order to compare a hair with a head hair sample from an individual,  
18 I have to first identify the questioned hair as being a head hair.  
19 I have to compare head hair with head hair.

20 BY MR. BURDINE: Objection. I would like to  
21 interpose an objection--

22 BY THE COURT: State your objection.

23 BY MR. BURDINE: --here at this time. Uh, my  
24 objection--my objection is that--my objection is this,  
25 that allowing a question that the expert is testifying  
26 to, uh, has more prejudicial effect than probative  
27 value; that it, uh, has more prejudicial effect than  
28 probative value, uh, as relates to this case as it  
29 relates to our client.

1 BY THE COURT: The objection is overruled. You  
2 may continue.

3 BY MR. ALLGOOD: Thank you, your Honor.

4 Q. Continue if you would, Mr. Blythe.

5 A. Well using these certain characteristics that are  
6 associated with the various races, I was able to determine these  
7 hairs were hairs from an individual of the black race. The hairs  
8 were hair fragments and I couldn't identify the area of the body  
9 from which the came so they're unsuitable for comparison with the  
10 known hair sample. So the limit of my abilities at this point in  
11 time was just to associate these hairs or determine that these  
12 hairs came from an individual of the black race.

13 Q. Now, when you start talking about hair fragments as  
14 opposed to an actual, uh, full hair, explain for the ladies and  
15 gentlemen of the jury, I realize obviously everybody knows a  
16 fragment is something smaller, but explain to them what difficul-  
17 ties you have when you try to make comparisons from those fragments  
18 as opposed to a full length hair and things of that nature.

19 A. Well a--a--a person's head hair, for example, is--doesn't  
20 look exactly the same near the root end of the hair as it looks  
21 toward the tip of the hair. In most everyone, especially if they  
22 let their hair grow out, be they male or female or what have you,  
23 naturally the hair at the root end is darker than the hair at the  
24 tip. Usually the sunlight, for example, will cause some bleaching  
25 effect. So I need a full length or nearly a full length of hair to  
26 make a reliable association. If I take just a small fraction of an  
27 inch or a small piece of hair and try to compare it with a head  
28 hair, there's no reliable information that can be obtained as far  
29 as saying it came from a person. The only reliable information in

1 these small fragments would be the racial indicators.

2 Q. Insofar as being able to determine, for example, where on  
3 the body they came from, uh, things of that nature, a fragment is  
4 not suitable for those comparisons, is that correct?

5 A. That's correct. I could--these--these hair fragments  
6 were such that I could not identify the body area from which they  
7 came.

8 BY MR. ALLGOOD: I've no further questions, your  
9 Honor.

10 BY THE COURT: Cross examination.

11 BY MR. WILLIAMSON: Your Honor, we have no questions  
12 of this witness.

13 BY THE COURT: Is this witness to be finally  
14 discharged?

15 BY MR. ALLGOOD: I would ask that he be finally  
16 discharged, your Honor?

17 BY MR. BURDINE: For the record, your Honor, I'd  
18 like to renew my previous motion in that this testimony  
19 of this expert has more prejudicial effect than  
20 probative value as to this case.

21 BY THE COURT: The ruling is the same. The  
22 objection is overruled.

23 BY MR. BURDINE: Thank you.

24 BY THE COURT: Is this witness finally discharged?

25 BY MR. WILLIAMSON: Your Honor, uh, I--I will be  
26 able to determine that at nine o'clock. I'll have--I--  
27 I've got a--if he can stay till--till we recess, I can  
28 make a phone call and then I can make that determination.

29 BY THE COURT: Are you planning on flying out